

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 07-09-03 Item 3.h.

File Number
CP 03-037

Application Type
Conditional Use Permit

Council District 3

Planning Area
North San José

Assessor's Parcel Number(s)
230-29-062

STAFF REPORT

PROJECT DESCRIPTION Completed by: Mike Mena

Location: East side of Technology Drive, approximately 750 feet southerly of Airport Parkway

Gross Acreage: 2.5 Net Acreage: 2.5 Net Density: N/A

Existing Zoning: IP Industrial Park Existing Use: Professional Office and Research & Development Building

Proposed Zoning: No Change Proposed Use: To convert a 4,580 square foot portion of an existing office building to use for a post secondary school of acupuncture and practice of Chinese medicine

GENERAL PLAN Completed by: MM

Land Use/Transportation Diagram Designation
Industrial Park Project Conformance:
[x] Yes [] No
[] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING Completed by: MM

North: Industrial Park - Research & Development/Office IP Industrial Park

East: Commercial - Hotel and restaurant CO(PD) Planned Development Zoning

South: Commercial and Office A(PD) Planned Development Zoning

West: Industrial Park – Research & Development A(PD) Planned Development Zoning

ENVIRONMENTAL STATUS Completed by: MM

[] Environmental Impact Report [x] Exempt
[] Negative Declaration circulated on [] Environmental Review Incomplete
[] Negative Declaration

FILE HISTORY Completed by: MM

Annexation Title: Airport No. 3 Date: May 29, 1958

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[x] Approval Date: Approved by: _____
[] Approval with Conditions [] Action
[] Denial [] Recommendation
[] Uphold Director's Decision

APPLICANT/OWNER

Borelli Investments
1770 Technology Drive
San José CA 95110

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Mike Mena

Department of Public Works

See attached memo.

Other Departments and Agencies

City of San José Fire Department: See attached memo(s).

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This request is for a Conditional Use Permit (CUP) to convert a 4,580 square foot portion of an existing office building to use as a post secondary school on a 2.5 gross acre in the IP Industrial Park Zoning District located on the east side of Technology Drive, approximately 750 feet southerly of Airport Parkway. A Conditional Use Permit is required for a post secondary school in the IP Industrial Park Zoning District.

The Zoning Ordinance defines a post secondary school as an institution of higher learning where one is required to complete education earning a high school diploma or is on the path to earning a college degree. Post secondary schools include colleges, universities, as well as junior colleges, either public or private in nature. The proposed college of traditional Chinese medicine, including acupuncture and practice of Chinese medicinal uses, is certified by the State and meets the definition for post secondary school.

The proposed use will occupy approximately 4,580 sq. ft. of an existing 43,500 sq. ft. industrial/office building, and no exterior building changes or other site modifications are proposed. The project would maintain the 197 parking spaces provided on-site. The proposed school will have approximately 40- 100 students per quarter/semester, arriving and leaving the site throughout the day (9:00am – 9:30pm, M-F; 9:00am – 5:00pm, Sat). In addition to students and staff, the school will utilize some volunteer patients for training purposes.

The site is surrounded by industrial park and commercial/office uses to the north, south and west, and a hotel and restaurant to the east.

GENERAL PLAN CONFORMANCE

The proposal is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Industrial Park in that limited supporting commercial uses including post secondary schools are allowed in areas with the Industrial Park designation.

ENVIRONMENTAL REVIEW

The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts conversion of existing facilities, in that the proposed project will operate a secondary school facility within an existing office building with no new construction or expansion of the existing facility. Some minor interior alterations may be necessary which would involve things such as interior partitions, plumbing and electrical conveyances.

PUBLIC OUTREACH

Public Notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property with 500 feet of the subject site. Staff has been available to discuss the project with the public.

ANALYSIS

The primary issues associated with this project are land use compatibility and conformance with the City's Zoning Ordinance parking requirements.

Land Use Compatibility. The Industrial Park Land Use Designation excludes industrial uses of which the functional or operational characteristics of a hazardous or nuisance nature can not be mitigated through design controls and allows some compatible non-industrial uses (i.e., post secondary schools) which would typically be incompatible with the heavier industrial districts. The General Plan recognizes that it is desirable to allow some supporting commercial uses within Industrial Park areas, as long as they would not impair the use of adjacent sites for industrial park uses. The proposed post secondary school would not impact any Industrial Park uses on or in close proximity to the site.

Many of the classes offered will be held during evening hours to serve as "continued education" opportunity for working students, and to distribute foot and vehicular traffic. The school does not propose uses beyond regular class instruction/training, thereby discouraging loitering which could potentially impact the existing businesses on the subject site. The school will also use some voluntary patients for training purposes. The limited number of students and the primary administrative and office activities of the project are low intensity uses by nature and will be in keeping with the industrial park and office character of the area.

Parking. For a post secondary school use, the Zoning Code requires one parking space per each three students and one space per each staff person, in addition to one parking space per 250 square feet of leased space for voluntary patient parking as would be required for a medical clinic use. The existing parking lot includes 197 parking spaces, of which 137 are currently required for use by the existing office and research & development uses also on the site. The proposed school would allow enrollment of up to 100 students per quarter/semester and up to 10 staff members on site at any one time, thereby requiring a total of 44 parking spaces. The use will also require 16 spaces for volunteer patients. Therefore, the remaining 60 parking spaces on site will be sufficient to accommodate the proposed number of students and staff.

Staff has decided the proposed school is compatible with the surrounding uses. The school proposes no exterior changes to the building or the site which will readily allow the use of this square footage for industrial park uses in the future.

RECOMMENDATION

Planning Staff recommends that the Planning Commission approve the Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The proposed college of traditional Chinese medicine is a form of a post secondary school, and post secondary schools are consistent with the Industrial Park land use designation.
3. The 2.5 acre site is located in the IP Industrial Park Zoning District.
4. The project site is developed with an existing industrial park building of approximately 43,500 sq. ft.
5. The project proposes a school for up to 100 students and up to 10 staff and proposes to allow volunteer patients at the facility.
6. No exterior changes are proposed to the structure or the property.
7. Ten (10) parking spaces are provided for staff and thirty-four (34) spaces are provided for use by students with sixteen (16) spaces provided for volunteer patients.
8. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
9. The site is surrounded by industrial park and commercial uses to the north, east, south and west.

The Planning Commission concludes and finds based on an analysis of the above facts that:

1. The proposed project is consistent with the San José 2020 General Plan Land/Use Transportation Diagram designation of Industrial Park.
2. The proposed project is in compliance with the requirements of the California Environmental Quality Act.
3. The proposed use will be compatible with uses in the surrounding industrial and commercial districts.
4. As conditioned in this Permit, the post secondary school has adequate parking.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working

in the surrounding area; or

- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water

Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Conformance with Plans.** Construction and development shall conform to approved Planned Development Plans entitled, "Conditional Use Permit for the Five Branches Institute of Chinese Medicine" dated June 18, 2003 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
4. **Sign Approval.** No signs are approved at this time. All signs shall be subject to approval by the Director of Planning.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 03-037, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
7. **Students and Staff.** Not more than 100 students nor more than 10 staff are authorized by this Permit at the facility, and including use of volunteer patients. The occupancy of the facility shall also conform with applicable requirements of the Building and Fire Code.
8. **Hours.** The school shall not operate between the hours of 12:00 midnight and 6:00 a.m. unless authorized by a subsequent Conditional Use Permit.
9. **Patient Care Training.** Care and treatment of patients shall be limited to activities incidental to the permitted classroom/instruction activities. The operation of a clinic is not permitted.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c:

207-10/MJM